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**POLITICAL TERRORISM & POLITICAL CRIME VIS-À-VIS
CRIMINALIZATION OF POLITICS: A Critical Analysis of the Efforts of Indian
Judiciary in Preserving the Democratic Values**

M.R. Sreenivasa Murthy & K. Syamala

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POLITICAL TERRORISM & POLITICAL CRIME VIS-À-VIS CRIMINALIZATION OF POLITICS: A Critical Analysis of the Efforts of Indian Judiciary in Preserving the Democratic Values

M.R. Sreenivasa Murthy & K. Syamala*

[Abstract: Criminalization of politics is an evergreen debate in Indian democratic system. On August 10, 2021, the Supreme Court of India in Brajesh Singh v. Sunil Arora¹ found a clear flouting of the letter and spirit of the judgment delivered in Rambabu Singh Thakur v. Sunil Arora [decided on February 13, 2020], in which directions are given to publish details of criminal cases against candidates fielded in Lok Sabha and Assembly polls. In this case, the Supreme Court said, the nation continues to wait and is losing patience. The court appealed to the conscience of law makers, hoping that they will wake up soon and carry out a major surgery for weeding out the malignancy of criminalization of politics. Not taking criminalization of politics will lead to not only the destruction of democratic values but also will affect the judicial review. This article attempts to analyse the concept of political crime and political terrorism, and the recent trends of political criminals terrorizing communities to gain political power. The paper attempts to explore the questions: How the delay in disposal of criminal cases involving MLAs and MPs is encouraging the political terrorism in India and the efforts taken by Indian judiciary to curb the criminalization of politics.]

I

Introduction

'At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper-no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point'.

-- Sir Wiinston Churchill²

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¹ (2021)10 S.C.C. 241.

² *Mohinder Singh Gill and Another v. Chief Election Commissioner, New Delhi and Others*, (1978) 1 S.C.C. 405.

Political violence, political crime, and political terrorism have recently taken a centre-stage in the political debates in India. The Indian judiciary has made several efforts to address the issue of criminalization of politics and for the protection of democratic values. The attack by political groups or sympathizers to protect their political power by maligning the judiciary became talk of the town, when the sympathizers of YSRCP party attacked Andhra Pradesh High Court judges on social media platforms by putting derogatory comments about the judges and the subsequent disclosure of complaint made by Y.S. Jaganmohan Reddy against Justice N.V. Ramana, Former Chief Justice of India. The complaint was against the decision whereby Justice had given directions to the Chief Justices of all high courts to take serious and rigorous steps to accelerate the speed of the criminal cases pertaining to MPs/MLAs.³

Judiciary, as a custodian of democratic values, is duty bound to keep checks and balances on criminalization of politics and to protect the fundamental rights of the citizens against political violence and political crime. As part of its functions, courts are duty bound to deliver justice, by ensuring fair and speedy trial in all criminal cases including those pertaining to MP/MLAs.⁴ The Supreme Court, in *Lily Thomas v. Union of India*,⁵ upheld the legislative power of the Parliament to enact electoral disqualifications pertaining to criminalization of politics and held that the 18th report presented to the Rajya Sabha on electoral reforms⁶ exhibits the concerns of society about regressive trend of criminalization of politics that has the proclivity and propensity to send shivers down the spine of a constitutional democracy.

The Court in plethora of cases urged the Election Commission to follow its directions in letter and spirit to curb the criminalization of politics, so that the purity of democracy can be strengthened, and the citizen of India can be ensured free and fair elections. The Constitution Bench of the Apex Court observed that it is the constitutional duty of the Election Commission of India to supervise elections, control party discipline of a political party by not encouraging candidates with criminal antecedents.⁷

³ Legal Correspondent, *Supreme Court for time-bound trial of criminal cases against politicians*, THE HINDU (Sep. 16, 2020), available at: <https://www.thehindu.com/news/national/supreme-court-for-time-bound-trial-of-criminal-cases-against-politicians/article32624000.ece>. (last visited 10 Oct. 2022).

⁴ *Hussainara Khatoon & Others v. Home Secretary, State of Bihar*, 1979 S.C.R. (3) 532.

⁵ *Lily Thomas v. Union of India*, (2013) 7 S.C.C. 653.

⁶ Law Commission of India, *Electoral Disqualifications*, Report No. 244 (Feb. 2014), available at: <https://adrindia.org/sites/default/files/20th%20Law%20Commission%27s%20244th%20report%20on%20Electoral%20disqualification,%202014.pdf> (last visited 10 Oct. 2022).

⁷ *Supra* note 5.

The Apex Court in *Rambabu Singh Thakur v. Sunil Arora and Others*⁸ and in *Brajesh Singh v. Sunil Arora and Others*⁹ expressed its anguish and commented upon the failures of the constitutional machineries in implementing the directions issued in letter and spirit regarding publishing of the criminal cases against the candidates fielded in the Lok Sabha and Assembly polls. In *Brajesh Singh v. Sunil Arora and Ors*, the Apex court made serious comments stating that 'the nation continues to wait and is losing patience.... Appeal to the conscience of the lawmakers hoping that they will wake up soon and carry out a major surgery for weeding out the malignancy of criminalization of politics, which is growing day by day'.

Justice Rakesh Kumar in his order, while referring to Sri Y.S. Jagan Mohan Reddy, the present Chief Minister of Andhra Pradesh State, stated that there are more than thirty criminal cases pending against him and in nearly ten CBI cases, he is accused. The cases are pending since 2011, and till date, in none of the cases, charges have been framed. As per the court, such delay is nothing but *a mockery with the system*. He further stated that the judges of Andhra Pradesh High Court were horribly maligned by his political party sympathizers for delivering judgments, which do not favour the ruling party. Referring to the directions issued by then Supreme Court judge, Justice N.V. Ramana, to all the Chief Justices of High Courts with regard to accelerating the disposal of criminal cases pertaining to MPs/MLAs, and subsequent incident of publication of the letter written by Sri Y.S. Jagan Mohan Reddy to the Chief Justice of India against Justice N.V. Ramana and other judges of the Supreme Court, Chief Justice of A.P. High Court, and about half a dozen Judges of A.P. High Court, mentioning that political violence, if not curtailed, can frustrate the independence of judiciary, judicial review, and fair justice delivery system.

The issue of criminalization of politics, political offence, political violence, and political crime are linked, intertwined, and directed towards furthering political dominance. According to Kirchheimer's theory of 'derivative political trial', weapons of defamation, perjury, and contempt are manipulated to bring disrepute upon a political foe'.¹⁰ Here, the judiciary is the political foe for taking steps to curb the criminalization of politics, hence against which the political party sympathizers are using the weapons of defamation, perjury and contempt. According to the political analysts, if actions are not taken to curb the criminalization of politics, there is a possibility of evolution of political terrorism, which is more dangerous and serious threat to the survival of democracy. Political terrorism is an act of terrorizing the communities to retain political power and dominance even by abusing the free and fair elections. The recent trends of using money-muscle power and political violence in elections to terrorize the voter-community is the undeniable

⁸ *Rambabu Singh Thakur v. Sunil Arora and Others*, 2020 S.C.C. Online S.C. 178.

⁹ *Brajesh Singh v. Sunil Arora and Others*, (2021) 10 S.C.C. 241.

¹⁰ Julia Jansson, *TERRORISM, CRIMINAL LAW AND POLITICS: THE DECLINE OF THE POLITICAL OFFENCE EXCEPTION TO EXTRADITION* 11 (2020).

fact, which suggest the transformation of Indian politics from political violence or political crime towards political terrorism.

II

Political Violence, Political Crime and Political terrorism

Political violence is a general phenomenon in the history of mankind. It is the means to wage a long-term ideological battle between rulers through war and political insurrections. Fidel Castro in Cuban Revolution,¹¹ assassination of Sri Lanka's foreign minister,¹² Lakshman Kadirgamar, overthrowing of President Maaouyia Ould Taya of Mauritania,¹³ 2005 massacre in north-western region of Kurdistan in Iran¹⁴ and many more. The history of mankind is full of stories of political violence and the acts of political violence only led to the American Revolution which overthrew the British colonial rule. Political violence is generally perceived as legitimate and justifiable means to ascend the power.¹⁵ According to the jurists such as Thomas Jefferson, John Stuart Mill, and Karl Marx, etc., political violence acts as a medicine to keep the sound health of the government and acts as a threat against misuse of power.¹⁶

In general, when an individual is engaged in an intentional act of causing social harm by offending or hurting others, it is called crime. When the motive and intent of the crime is political, it is termed as political crime. The political violence is to grab the power by rebellion or insurrection, whereas political crime is an intentional criminal attack on political opponent to gain the power. Political crime may be done by the politician himself, or done through his agents, but the intent involved is to commit crime for political gain or political vendetta or some other political reason. Political crime may be committed at an individual politician level or under the instructions of the leader of the political party, but the target is to attack the

¹¹ Gary Prevost, *Fidel Castro and the Cuban Revolution*, 24 *HEADWATERS* 19 (2007).

¹² Associated Press, Sri Lankan minister killed by snipers, *THE GUARDIAN* (Aug. 13, 2005), available at: <https://www.theguardian.com/world/2005/aug/13/2> (last visited 10 Oct. 2022).

¹³ John Alan Cohan, *Necessity, Political Violence*, 35 *STETSON LAW REVIEW* 903, available at: <https://ocd.lcwu.edu.pk/cfiles/Political%20Science/Maj/Pol.Sc-503/necessity-political-violence-and-terrorism.pdf> (last visited 12 Oct. 2022).

¹⁴ Michael Howard, Iran sends in troops to crush border unrest, *THE GUARDIAN* (Aug. 5, 2005), available at: <https://www.theguardian.com/world/2005/aug/05/iran.michaelhoward> (last visited 13 Oct. 2022).

¹⁵ *Supra* note 12.

¹⁶ *Id.*

opponent party members to weaken their political strength.¹⁷ This kind of scenario can be seen when there is power asymmetry between the political parties. Murder, grievous hurt, hurt, rape, kidnapping etc., are the usual modes adopted to attack the political rivalry. When political crime is committed by the ruling party, it will take the shape of the state crime if state agencies such as police are involved.

The word terrorism includes the expression terror, which means, terrorizing the people to make them agree to an ideology by creating fear through violent actions. Political crime and political violence are directed to attack the political opponent, on the other hand, political terrorism is used to terrorize the civilians to create panic and fear in the population.¹⁸ Terrorism is defined as 'pre-meditated, politically motivated violence perpetrated against non-combatant targets by subnational groups or clandestine agents, usually intended to influence an audience'.¹⁹ Terrorizing the voters through demonstration of violence against civilians is a new political strategy to win the elections. The victim in the political terrorism is the voters or civilians, who are key role players in deciding the political power game. The key indicators of political terrorism are rejection of constitutional values such as democracy, rule of law, denial of the existence of political opponents, encouraging political violence-political crime and curtailment of civil liberties.²⁰ According to Wilkinson, political terrorists lack even a minimal standard of rationality, and their only objective is to gain the power.²¹

According to Wilkinson, criminal violence is usually motivated by some desire for private gain or personal vendetta, while acts of political violence or terrorism are motivated by a collective or altruistic purpose. In his book, *Political Terrorism*, Paul Wilkinson mentioned the difference between political terrorism and other forms of organized violence. According to him not only the severity and amorality but also antinomianism in the political terrorism that fundamentally distinguishes it from other forms of violence. Political terror is waged consciously and deliberately and implicitly prepared to sacrifice all moral and humanitarian considerations for some of the political ends.²²

The important question that needs investigation in this conceptual frame is: When a political crime transforms into political violence and political terrorism? When a

¹⁷ Alex P. Schmid (2004) *Frameworks for Conceptualizing Terrorism*, 16(2) TERRORISM AND POLITICAL VIOLENCE 197 (2010).

¹⁸ United States Institute of Peace, *Teaching Guide on International Terrorism: Definitions, Causes and Responses*, United States Institute of Peace (2001), <https://www.usip.org/sites/default/files/terrorism.pdf> (last visited 20 Oct. 2022).

¹⁹ Title 22 of the United States Code, Section 26 (d).

²⁰ Steven Levitsky & Daniel Ziblatt, *HOW DEMOCRACIES DIE* (2018).

²¹ Richard M. Kirk, *Political Terrorism and the size of government: A positive institutional analysis of violent political activity*, 40(1) PUBLIC CHOICE 41(1983).

²² Paul Wilkinson, *POLITICAL TERRORISM* 12-13 (1974).

person with criminal record turns into a politician, who is habituated or involved into committing political crimes for the survival of his political career, when that person fights for winning elections by creating violence or to maintain the dominance in politics by damaging or weakening the political opponent, it can be termed as 'political violence'. When such politicians or political parties threaten or terrorize the voters or community to gain or achieve the political powers by ignoring all moral and human justifications, thereby engaging into brutal attacks on the masses to suppress not only the political opponents but also the media's freedoms, and also curtail the civil society's freedom of speech and expression by causing threat to life and personal liberty of conscience keepers simply to retain or gain the power, it can be said that political violence has entered into the realm of political terrorism.

III

Incidents of Political Violence and Political Terrorism in India

According to the political analysts, Gujarat-riots of 2002 are a perfect example of political violence carried to create terror among the anti-Hindu voters. Political violence is a key driver in Bengal's politics as well. It can be prominently witnessed in India during elections, but its presence can be sensed through the news of political killings, filing of fraudulent cases against each-other, or damaging the public property throughout the year. According to the human rights activists, Sujato Bhadra and Purnendu Mondal, there are approximately 531 people of various political parties were killed by the ruling party CPI-M, and 2,000 workers of CPI-M were also killed in in that regime. According to them, three key parties in Bengal, 1,067 workers of AITC (1998-2020), 615 workers of the CPI-M (2009-2019), 93 persons of (2013-2020) were killed in that political violence committed against each-other.²³

According to UNDP, electoral violence means:

Any acts or threats of coercion, intimidation, or physical harm perpetrated to affect an electoral process, or that arise in the context of electoral competition. When perpetrated to affect an electoral process, violence may be employed to influence the process of elections, such as efforts to delay, disrupt or derail a poll, or to influence

²³ Suvojit Bagchi, *Bengal through the Decades: The More Things Change, Have they Stayed the Same?* 310 OBSERVER RESEARCH FOUNDATION (2021), available at: https://www.orfonline.org/wp-content/uploads/2021/04/ORF_OccasionalPaper_310_BengalHistory.pdf (last visited 15 Oct. 2022).

the outcomes: the determination of winners in competitive races for political office, or securing the approval or disapproval of referendum questions.²⁴

Terrorists-Naxals influencing the political parties, play a key role in the governance from background, is a different *modus-operandi*, when compared with the kind of political terrorism evolved as a consequence of criminalization of politics. In Bihar, the ultra-Left is the one, which commands the political environment. The emergence of private-armies of every political party only to engage into the political violence during election and post-election to gain the political power can be witnessed in Bihar. The 1990s appear to be the darkest phase of Bihar's electoral history, wherein nearly 641 lives lost to polls related violence between 1990 and 2004. Out of this, 196 people died only during *panchayat* polls in 2001, which held after a long gap of 23 years in Bihar.²⁵ But it is claimed that the political violence in Bihar came to an end with the joint declaration of PW and the MCC in 2001 not to kill each-other's revolutionaries.²⁶ In 2005, 2009, 2010, 2014, and 2015 elections, there is single digit figure of loss of lives during polls, and in 2015, no casualty was recorded.²⁷ Progressing towards no-political violence route, Bihar set an example for rest of the world about the possibility of politics without violence.

Special Story of Political Violence in Andhra Pradesh

In Andhra Pradesh, the Indian National Congress (INC) and Telugu Desam Party (TDP) have been political rivals since 1994 and both the parties have been indulged in the deliberate provocation of violence to suit their political ends. Killings, riots, kidnapping, etc., are commonly seen in the political conflicts between both the parties. There are numerous reports of political violence wherein 390 political murders were committed during the regime of Congress (1989-1994), and there were 964 murders committed during the TDP government.²⁸

The YSRCP leader Y.S. Jaganmohan Reddy took over the Andhra Pradesh administration as Chief Minister, there were stories of political violence everyday between the YSRCP and TDP. Y.S. Jaganmohan Reddy of the YSR Congress is

²⁴ United Nations Development Program, *Understanding Electoral Violence in Asia* (2011), available at: https://www1.undp.org/content/dam/undp/library/Democratic%20Governance/UNDP_elections_violence_AP.pdf (last visited 20 Oct. 2022).

²⁵ Sushil Kumar Modi, *1990s were the most violence years in Bihar's electoral history, that gloomy picture has changed*, THE INDIAN EXPRESS (May 08, 2019), available at: <https://indianexpress.com/article/opinion/columns/bihar-elections-violence-politics-lok-sabha-elections-evm-5715811/> (last visited 20 Oct. 2022).

²⁶ CPI (ML), *People's War of MCC ke Kendriya Netritva Dwara Zari Sanyukt Press Vigyapti* JANVADI MUKTIMARG 30-31 (2001).

²⁷ *Supra* note 27.

²⁸ Refugee Review Tribunal, *Australia, RRT Research Response* (2006) available at: <https://www.refworld.org/pdfid/4b6fe2240.pdf> (last visited 21 Oct. 2022).

accused in more than 30 cases, among which, 10 cases were registered by the Central Bureau of Investigation (CBI). Since May 2012, Y.S.R. Jagannathan Reddy is facing several allegations for committing multiple financial scams and for amassing the disproportionate wealth during his father Y.S. Rajasekhara Reddy's government. Coming from the factionist background, his grandfather, Rajareddy is a well-known factionist, who was involved in the serious crimes and violence in Kadapa district of Andhra Pradesh. Y.S. Rajasekhara Reddy (YSR), who was the Chief Minister of Andhra Pradesh from 2004 to 2009, gained political power with the support of his father Raja Reddy, who, with the support of his fellow caste-men and factional gangs, engaged in the political violence and intimidation for victory in the election. The alliance of YSR with Gali brothers (Gali Janardhan Reddy and his brothers, who are well-known mining-mafias) also helped him to gain political power.

The tussle continued when YSRCP gained power in 2019 elections. The bitterness of tussle can be seen when Jagan Government moves to abolish Andhra Pradesh State Legislative Council (SLC) simply because the TDP dominated SLC blocked his move to create three State Capitals instead of one at Amaravati.²⁹ Andhra Pradesh State Election Commissioner (APSEC), Nimmalagadda Ramesh Kumar was removed unceremoniously before the completion of his tenure, as he took the decision to hold the *panchayat* elections on account of the spread of COVID-19. The said order of removal was challenged by him in the High Court of Andhra Pradesh on the ground that the said order is illegal, manifestly arbitrary, and unconstitutional. The High Court of Andhra Pradesh upheld the writ petitions and PILs filed for reinstatement of the SEC. The Court held that the attempt of AP State Government to counter the same on the point of maintainability or locus is frivolous and it is rejected.³⁰ Not only in this issue, but many of the decisions also taken up by Jagan Mohan Reddy were quashed by the High Court of Andhra Pradesh in different pronouncements. The YSRCP supporters agitated by the decisions of the High Court of Andhra Pradesh posted maligning statements in the social media against the Judges. A bench of Justice Rakesh Kumar and Justice D. Ramesh, in the matter of I.A. (SR) No. 37122 of 2020 in different writ petitions,³¹ while referring to the acts of the members of ruling party, who were raising the questions in the social media and electronic media platforms about the honesty, integrity, sincerity, fearlessness, and impartiality of the Judges of the High Court of Andhra Pradesh, who were a part

²⁹ *Three reasons why Jagan Reddy decided to dissolve legislative council, 27th January 2020, available at: <https://www.hindustantimes.com/india-news/three-reasons-why-jagan-reddy-decided-to-dissolve-legislative-council/story-AK1Yb8Mh32PN2k35gr6ZfK.html> (last visited 22 Oct. 2022).*

³⁰ *Dr. N Ramesh Kumar, IAS v. State of Andhra Pradesh*, (2020) 4 A.L.T. 102 (DB).

³¹ W.P. (PIL) NO. 127 of 2020, W.P. Nos. 8966 of 2020, 9135 of 2020, 18794 of 2020 and W.P. (PIL) Nos. 132, 135, 136, 137, 145 and 192 of 2020.

of those judgments, which happened to rule out the decisions of the Jagan Mohan Reddy Government. As per the Court:³²

‘...if one is influential, powerful i.e., both in money and muscle, he feels that he is having every privilege to do anything as per his convenience and to the peril of system or poor citizen..... As per the prevailing situation in the State of Andhra Pradesh, with heavy heart, I may not refrain to record that protection of fundamental rights of citizens of the State of Andhra Pradesh by this Court has become very difficult.... As a Judge, I have come across several writ petitions with complaint that persons, without following due process of law, were picked up by the State through its police.... In one case, who was associated with the proceeding before this court in a writ of Habeas Corpus, was not even spared by the police....One may not forget that this is only State, where the AP Legislative Council when had not agreed to proceed with the tune of Legislative Assembly’s decision regarding establishment of three capitals in one State, the Government of Andhra Pradesh recommended for abolition of Legislative Council itself. Even the Office of the State Election Commissioner, which is one of the Constitutional organs, was not spared, since the State Election Commissioner was not proceeding as per the wishes of the State Government’.

The order referred that after getting success in overreaching and undermining the aforementioned two constitutional bodies, now the current Government of Andhra Pradesh has turned towards the High Court of Andhra Pradesh, which is passing orders to curtail the arbitrary actions of the State Government in many matters such as introduction of English medium as compulsory subject in Government schools, land auction, habeas corpus petitions, etc. Against the increasing vulgar, defamatory, and maligning social media posts on the Judges of the High Court, the Registrar General of A.P. High Court registered two FIRs before the Superintendent of Police, CID, Cybercrimes, the police took no action, and the case was transferred later from State police to the CBI. The investigation by CBI is still going on. On 16th November 2021, the High Court of Andhra Pradesh observed that ‘judge bashing has become a favourite pass time for some people....In a politically polarized environment, the judges have become soft targets.’³³

The recent arrests of five persons in the judge bashing case by the CBI was after the public comments made by then Chief Justice of India, Justice N.V. Ramana, when he said, ‘New trend developed in the country. No freedom given to judges. If judges complain to the IB and CBI, they are not helping the judiciary at all. This is a serious matter’. These comments were made while hearing the case of the murder of ADJ Uttam Anand of Jharkhand judiciary. The bench, comprising Justice N.V. Ramana

³² *Id.* para 12.

³³ The Wire Staff, *Judge Bashing is not Constructive Criticism: HC Wants Abusive Social Media Posts Taken Down*, THE WIRE (Nov. 02, 2021) available at: <https://thewire.in/law/judge-bashing-is-not-constructive-criticism-hc-wants-abusive-social-media-posts-taken-down> (last visited 25 Oct. 2022).

and Justice Surya Kant, said that in cases involved gangsters and high-profile accused intimate judges physically and mentally, and some people, who do not get orders of their choice, circulate messages on WhatsApp and other social media platforms with intent to malign judges.³⁴

The Registrar General of the High Court of Andhra Pradesh in his complaint to the SP, Cyber Crimes-CID, regarding abusive, life threatening, and intimidating postings in social media against the judges, mentioned about the involvement of YSRCP party behind the social media posts, stating that the judge bashing is having larger conspiracy and state police are inactive in dealing with the case, because they are under the control of the YSRCP government. He provided a detailed table of activeness of the State police in arresting the accused in cases filed by the YSRCP and showing lethargy in arresting the accused who are involved in judge bashing.

Justice Rakesh Kumar in the order referred to the pending criminal cases against Jagan Mohan Reddy, i.e., eleven criminal cases registered by the CBI, 6 cases filed by the Enforcement Directorate, and 18 criminal cases filed under the Indian Penal Code, 1980, and till date, no charge sheet has been filed in these cases. Justice Rakesh Kumar also referred those criminal cases, which were closed by the State police after YSRCP came into the ruling.³⁵ In this order, Justice Rakesh Kumar also stated that the day High Court of Andhra Pradesh in pursuance of the direction of the Supreme Court in *Ashwini Kumar Upadhyay & Others v. Union of India*³⁶ issued direction to the High Courts to list forthwith all pending criminal cases involving sitting/former legislators (MPs and MLAs), and also in the light of *Ganesh Narayan Hegde v. S.Bangarappa & Others*,³⁷ when supplementary cause list was published by the AP High Court showing that the W.P.No.9166 of 2020 to be listed on 12th October 2020 for pronouncement of orders, immediately Sri Ajeya Kallam, Principal Advisor to Jagan Mohan Reddy, in an interview with the press, made a letter public written by Jagan Mohan Reddy to the Chief Justice of India, alleging against Justice N.V. Ramana, Justice Jitendra Kumar Maheshwari, then the Chief Justice of AP High Court, and about half a dozen of AP High Court's judges. The Delhi High Court Bar Association members received threat calls of causing serious injuries to them and to their family members, after their panel condemned the Andhra Pradesh CM's allegations against Justice N.V. Ramana.³⁸

³⁴ PTI, *SC Anguished Over Incidents of Threat to Judges, Says IB and CBI Not Helping Judiciary*, THE WIRE (Nov. 02, 2021) available at: <https://thewire.in/law/sc-anguished-over-incidents-of-threat-to-judges-says-ib-and-cbi-not-helping-judiciary> (last visited 26 Oct. 2022)

³⁵ *Supra* note 33, para 16.

³⁶ *Ashwini Kumar Upadhyay & Others v. Union of India and Others*, 2020 S.C.C. OnLine S.C. 1044.

³⁷ *Ganesh Narayan Hegde v. S.Bangarappa & Others*, 1995 Cri. L. J 2935.

³⁸ Express News Service, *DHCBA president, others receive threat calls after resolution against AP CM Reddy*, THE INDIAN EXPRESS (Oct. 17, 2020), available at: <https://www.opindia.com/2020/10/delhi->

The bench comprising of Justice N.V. Ramana expressed his deep concern over tardy probe and prosecution in CBI cases against MPs and MLAs and issued a slew of directions for ensuring speedy investigation by the agency and conclusion of trials, besides setting up of additional special courts by the High Courts. As per the CBI report, 121 cases are pending for trial before the different CBI Courts, involving sitting and former MPs and 112 matters pending against serving and former MLAs. 37 cases are still in investigation stage and the oldest is registered on 24th October 2013.³⁹ It was written in the order that only after the Supreme Court order, dated 16th September 2020, passed in Writ Petition (Civil) 699 of 2016, A.P. Police submitted closure report in certain criminal cases pending against Jagannohan Reddy.⁴⁰ Ultimately, on the basis of his observations about the status of human rights enforcement in the State of Andhra Pradesh, functioning of the Police on the instructions of ruling party, attempts to defame the integrity of the judiciary, etc., the bench opined that there is a failure of constitutional machinery and emphasized on the need of decriminalization of politics, speedy disposal of criminal cases involving legislators.

IV

Trends of Criminalization in Politics in India

According to the report of the Association for Democratic Reforms (ADR), 2018, there are 230 criminal MPs out of 770 (30%) and among them 134 (17%) are charged with serious criminal cases, and out of 4083 MLAs analysed, 1335 (33%) are criminal MLAs, and out of them, 891 (22%) are with serious criminal cases.⁴¹ The nature of cases includes heinous and serious crimes such as crimes against women, cases related to hate speech, kidnapping, murder, etc., As per ADR's data, in the Lok Sabha, 2019 elections, 236 (44%) winners are with declared criminal cases, and in that, 161 (30%) are facing serious criminal charges. Further data also shows that out of 542 total winners analysed, 479 (88%) are billionaires. The following is the data

high-court-bar-association-members-threat-calls-condemn-jagan-mohan-reddy-letter (last visited 24 Oct. 2022).

³⁹ PTI, *SC to hear next week PIL seeking speedy disposal of criminal cases against lawmakers*, THE ECONOMIC TIMES (Nov. 10, 2021), available at: <https://economictimes.indiatimes.com/news/india/sc-to-hear-next-week-pil-seeking-speedy-disposal-of-criminal-cases-against-lawmakers/articleshow/87628779.cms?from=mdr> (last visited 27 Oct. 2022).

⁴⁰ *Supra* note 33, para 24.

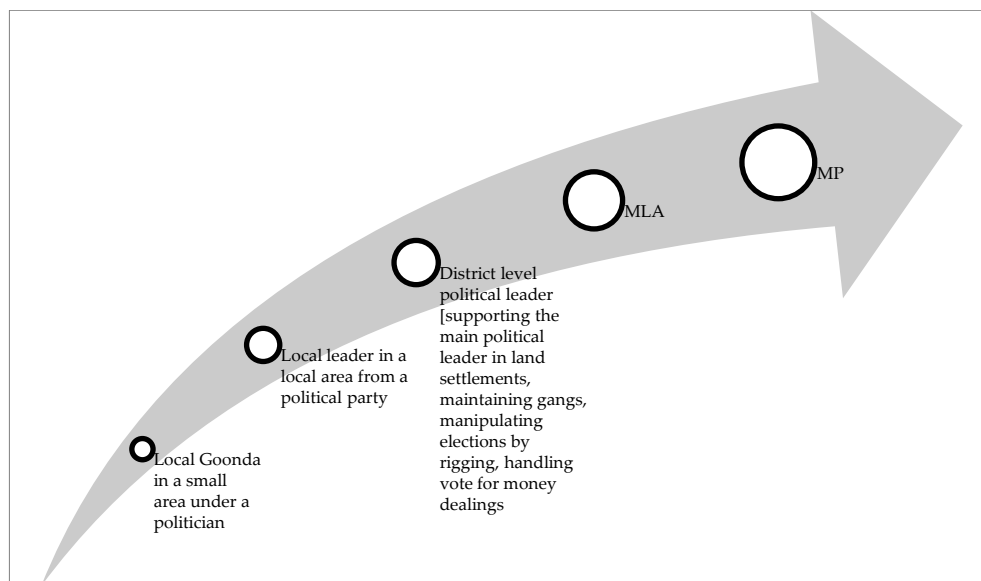
⁴¹ Association for Democratic Reforms, *MPs/MLAs with Declared Criminal Cases – All India* (Sep. 25, 2018), available at: https://adrindia.org/sites/default/files/Details_of_criminal_cases_of_MPs_and_MLAs_dated25thSept2018.pdf (last visited 20 Oct. 2022).

relating to criminal background of winners of Puducherry, West Bengal, Tamil Nadu, Kerala and, Assam elections held in 2021:

Name of the State	Total Winners analyzed	Winners with declared criminal cases	Winners with declared serious criminal cases	Billionaire winners
Puducherry	30	13 (43%)	6 (20%)	25 (83%)
West Bengal	292	142 (49%)	113 (39%)	158 (54%)
Tamil Nadu	224	134 (60%)	57 (25%)	192 (86%)
Kerala	136	96 (71%)	37 (27%)	75 (55%)
Assam	126	34 (27%)	28 (22%)	85 (67%)

Source: Association for Democratic Reforms⁴²

In India, the crime and politics are so intertwined that India started living with the fact that crime and politics are two inseparable sides of the same coin. To answer the questions, such as, why criminals enter into the politics, why money and muscle play the important roles in deciding the destiny of Indian democracy; one should look into the increasing cost of contesting elections day by day. It is an established fact in India that a criminal once gets into power, first thing he will do is to pressurize the State to drop the pending criminal cases against him. The trend in India as to how a politician with criminal background builds his career is showcased in the graph below:



⁴² MyNeta, *Candidate Affidavits for Elections in India*, available at: <https://www.myneta.info/> (last visited 22 Oct. 2022).

It is evident in Indian politics that there is a concrete interaction between criminal networks and political parties. One of the important reasons for criminals to get into politics is to protect the income earned and to deal with the criminal justice system. According to a study organized by Clingendael Institute,⁴³ the following four important and relatively well-documented spaces for interaction between criminals, politicians and political parties are as follows:

- (a) Patronage system;
- (b) Violence political entrepreneurs or intermediaries;
- (c) Local political authorities;
- (d) Government.⁴⁴

According to the above study, the political patronage serves as a vessel a criminal turned politician emerges under the patronage of a politician or political party by moulding or imposing a terror in the minds of the local masses or voters through their politico-criminal bossism.

Black money and eliciting financing for political parties slowly raised the dependence of the political parties on criminals. Self-financing ability of criminals to contest in the elections as party members is luring and attracting option for political parties, who are always in dire need of raising money for competing in the expensive election battle in the largest democracy. Either as political financier or as an aide of mafia gang, the trend in Indian politics shows the steady rise of criminals turned into politicians. At one point of time, it is in Bihar, Madhya Pradesh, Rajasthan, Odisha, and Uttar Pradesh, where people recollect the horrors of political crimes. In 2019 elections, it seems to spread to all States, where more than 50% of the MLAs or MPs are having criminal background.

V

Impact of Political Terrorism on the Survival of Democracy

Political violence gains the momentum due to the lethargy of criminal justice system. It turns into political terrorism by threatening the voters and making democracy dance to their tunes. Steven Levitsky and Daniel Ziblatt in their book, *How Democracies Die*,⁴⁵ wrote that democracies may die at the hands not of generals

⁴³ Ivan Briscoe and Diana Goff, *Protecting Politics: Deterring the Influence of Organised Crime on Political Parties*, CLINGENDAEL & IDEA (2016), available at: <https://www.clingendael.org/sites/default/files/pdfs/Protecting-Politics-Deterring-the-Influence-of-Organized-Crime-on-Political-Parties-PDF.pdf> (last visited 23 Oct. 2022).

⁴⁴ *Id.*

⁴⁵ *Supra* note 20.

but of elected leaders, who subvert the very process that brought them to power. Blatant dictatorship is bringing factionists and criminals into the political mainstream and giving them the opportunity to taste the power of ruling people. Such politicians subvert the democracy by weakening the courts and neutral agencies, such as Election Commission, CBI, etc. Democracy is all about a balance between majority and minority and its essence is lost in absence of effective opposition. Based on Linz's book, *The Breakdown of Democratic Regime*,⁴⁶ Steven Levitsky and Daniel Ziblatt recognized the characteristics of political terrorism: The political dictator uses the following methods to terrorize the politics:

- (a) Rejects, in words or action, the democratic rules of the game;
- (b) Denies the legitimacy of opponents;
- (c) Tolerates or encourages violence;
- (d) Indicates willingness to curtail the civil liberties of opponents, including the media.

Political terrorism leads to hijacked, corrupted, or rigged election system and governance, leaving voters in an awful state of fear, horrified and helpless. Hitler is the best example history can ever have in defining what power can do, when it goes into the hands of an authoritarian extremist or factionist.

Political terrorism is a violence and terror caused to for political ends. The United Kingdom's Prevention of Terrorism (Temporary Provisions) Act, 1974 defines terrorism as 'the use of violence for political ends which includes any use of violence for the purpose of putting the public or any section of the public in fear'. According to Mitchell, United States Senator, 'terrorism involves the deliberate killing of randomly selected non-combatants for political ends, it seeks to promote a political outcome by spreading terror and demoralization throughout the population'.⁴⁷ It works on a rule to kill one and frighten ten thousand.⁴⁸ According to Paul Wilkinson, 'Political terrorists' targets tend to be almost indiscriminate and unpredictable...Usually no one person is particularly the target, therefore no one is safe....efforts to influence a large audience'.⁴⁹ The politicians, who tend to terrorize the voters and achieve power, often use abusive and un-parliamentary language to damage the credibility of opponents' character, and attack on their moral, political, social, and economic strengths.

⁴⁶ Juan J. Linz & Alfred Stepan (eds.), *BREAK DOWN OF DEMOCRATIC REGIMES, VOLUME I: CRISIS, BREAKDOWN AND REEQUILIBRATION* (1979).

⁴⁷ Michael J. Jordan, *Terrorism's Slippery Definition Eludes UN Diplomats*, *CHRISTIAN SCIENCE MONITOR* 7 (2002).

⁴⁸ Alex Schmid, *Terrorism - The Definitional Problem*, 36 *CASE W. RES. J. INT'L L.* 375 (2004).

⁴⁹ Paul Wilkinson, *Characteristics of Political terrorism* (1986), available at: <https://www.unl.edu/eskridge/cj394wilkinson.html> (last visited 28 Oct. 2022).

According to the Freedom in the World Report, 2021, the status of India has downgraded from free to partly free.⁵⁰ The scores are based on political rights indicators such as the electoral process, political pluralism, participation, government-functioning, civil liberties indicators related to freedom of expression and belief, associational and organizational rights, rule of law, autonomy, and individual rights. The incitement of a violent mob by Donald Trump to halt the certification of election results on January 6, 2021 shook the foundations of American democratic system. According to the report, authoritarianism will lead to political violence and such democracies will have little regard for due process or rule of law, and ultimately lead to the destruction of democracy. As the report suggests that political violence and suppression of the opposition by using the political and legal power is not limited to India, the authoritarian countries like Russia and China do not have any regard to the due process and rule of law. The countries such as Libya, Egypt, Morocco, etc., are also moving in a direction of disregarding the democracy. The media-freedom is curbed, and State power is used to track down the political opponents.⁵¹

According to the report, a vibrant democracy requires laws and institutions that guard against the accumulation of power in the hands of a few, and should work for complying with the international human rights principles such as necessity, transparency, oversight, and due process. If the State power is placed in the hands of the criminally motivated politicians, who are ready to misuse the power to terrorize the voters and political opponents, then it can facilitate large-scale political corruption, subversion of the democratic process, and repression of political opponents, and marginalize populations.⁵² If such things are allowed to happen, every democratic country has a danger of falling into the footsteps of Afghanistan.

⁵⁰ Sarah Repucci and Amy Slipowitz, *Freedom in the World Report 2021: Democracy under Siege*, FREEDOM HOUSE (2021), available at: https://freedomhouse.org/sites/default/files/2021-02/FIW2021_World_02252021_FINAL-web-upload.pdf (last visited 28 Oct. 2022).

⁵¹ Indian activist Anand Teltumbde was arrested in April 2020, Moroccan journalist Omar Radi was arrested in July 2021, and Lebanese Journalist Ghada was harassed for political reasons.

⁵² Sarah Repucci and Amy Slipowitz, *Freedom in the World Report 2021: Democracy under Siege*, FREEDOM HOUSE (2021), available at: https://freedomhouse.org/sites/default/files/2021-02/FIW2021_World_02252021_FINAL-web-upload.pdf (last visited 29 Oct. 2022).

VI

Efforts of Indian Judiciary & Other Institutions in Decriminalization of Politics

The Supreme Court of India, time and again, tried to bring political reforms through decriminalization of politics. A series of judgments have been delivered by the Court to deal with the issues of decriminalization of politics and disqualification of candidates with criminal antecedents. Law Commission of India in the 244th report⁵³ classified the decisions taken by the Court in the process of decriminalisation:

- (a) Decisions that introduce transparency into the electoral process;⁵⁴
- (b) Decisions that foster greater accountability for holders of public office;⁵⁵
- (c) Decisions that seek to stamp out corruption in public life.⁵⁶

Through the landmark judgments, the Supreme Court successfully brought transparency in the electoral system by making it mandatory to disclose the criminal records at the time of filing the nomination. The Apex court held that right to know about the electors is a fundamental right of voters in a democracy and is covered under Article 19(1) (a) of the Constitution of India.⁵⁷

The Representation of People's Act was amended to introduce conviction in criminal cases specified under Section 8 as a disqualification for being chosen or being legislator.⁵⁸ Holding Section 8(4) as unconstitutional, the Apex Court held that allowing MPs and MLAs, who are convicted while serving as members to continue in office, till an appeal against such conviction is disposed of, is nothing but

⁵³ Law Commission of India, 244th Report on Electoral Disqualifications (Feb. 2014), available at: <https://adrindia.org/sites/default/files/20th%20Law%20Commission%27s%20244th%20report%20on%20Electoral%20disqualification,%202014.pdf> (last visited 30 Oct. 2022).

⁵⁴ *Union of India v. Association for Democratic Reforms*, (2002) 5 S.C.C. 294; *People's Union for Civil Liberties v. Union of India*, (2003) 2 S.C.C. 549; *Lok Prahari v. Union of India and Others*, (2018) 4 S.C.C. 699; *Public Interest Foundation and Others v. Union of India and Others*, (2019) 3 S.C.C. 244; *N. Chandrababu Naidu v. Election Commission of India and Others*, 2019 (6) S.C.A.L.E. 225; *Subhash Chandra Agarwal v. Indian National Congress and Others*, (2013) C.I.C. 8047; *Rambabu Singh Thakur v. Sunil Arora & Others*, (2020) 3 S.C.C. 733.

⁵⁵ *Lily Thomas v. Union of India*, (2013) 7 SCC 653, *People's Union for Civil Liberties v. Union of India*, (2013) 10 S.C.C. 1.

⁵⁶ *Vineet Narain v. Union of India*, (1998) 1 S.C.C. 226; *Subramaniam Swamy v. Manmohan Singh*, (2012) 3 S.C.C. 65.

⁵⁷ *Union of India v. Association for Democratic Reforms*, (2002) 5 S.C.C. 294; *People's Union for Civil Liberties v. Union of India*, (2003) 2 S.C.C. 549.

⁵⁸ Representation of the People's Act, 1951, S.8.

compromising the standards of democracy and was declared the same as violative of Articles 101 (3) and 190 (3) of the Indian Constitution.⁵⁹

Introducing *none of the above* (NOTA), the Apex Court held that voters in a democracy shall have freedom to choose any candidate or reject any candidate, for NOTA will foster the greater accountability in the Indian political system.⁶⁰ Through *Jain Diaries* case, the Court emphasised the need for institutional reform to sever the connection between crime and politics.⁶¹

The Supreme Court in *Ashwini Kumar Upadhyay & Others v. Union of India & Others*,⁶² dealt with the issue relating to the inordinate delayed inquiries, investigations, and criminal trials, pending against legislators under various enactments, and categorized the case as a matter of paramount public importance. Referring to their earlier order, dated 10th September 2020, seeking information from certain High Courts regarding criminal cases pending against legislators under special legislations, such as the Prevention of Corruption Act, 1988, etc., and the reports received from various High Courts, a direction was issued to the Chief Justices of the High Courts to formulate and submit an action plan for rationalization of the number of special courts necessary, and sought suggestions from them for expedient disposal of pending criminal cases against legislators. A request has been made to all the Chief Justices of High Courts to list forthwith all pending criminal cases involving sitting/former legislators, particularly those wherein a stay has been granted, before an appropriate bench, comprising of the learned Chief Justice and their designates, and to decide whether the stay granted should continue, keeping in view the principles regarding the grant of stay.⁶³ And if the stay is considered necessary, it is required to hear the matter on day to day basis and dispose of the same expeditiously, preferably within a period of two months, without any unnecessary adjournment.

In *Public Interest Foundation and Others v. Union of India and Another*,⁶⁴ the court, while dealing with the issue of publicity of criminal antecedents by political parties and candidates, issued directions that the candidate filing nomination has to mandatorily disclose particulars of criminal cases pending against him/her in the nomination form and inform the same to the political party to which he/she belongs to, and such political party is obligated to put up the same on its website. Such information should be circulated by the candidate and the political party through

⁵⁹ *Lily Thomas v. Union of India*, (2013) 7 S.C.C. 653.

⁶⁰ *People's Union for Civil Liberties v. Union of India*, (2013) 10 S.C.C. 1.

⁶¹ *Vineet Narain v. Union of India*, (1998) 1 S.C.C. 226.

⁶² *Ashwini Kumar Upadhyay & Others v. Union of India & Others* Writ Petition (Civil) No.699/2016, Order dated 16th September 2020.

⁶³ *Asian Resurfacing of Road Agency Private Limited v. CBI*, (2018) 16 S.C.C. 299.

⁶⁴ *Public Interest Foundation and Others v. Union of India and Another*, (2019) 3 S.C.C. 224.

publication in widely circulated newspapers and electronic media at least thrice in the locality, where the candidate is contesting.

In *Brajesh Singh v. Sunil Arora and Others*,⁶⁵ the Apex Court while dealing with the issue of publicity of criminal antecedents by political parties and candidates as well as the compliance with the directions issued in *Public Interest Foundation and Others v. Union of India and Another*,⁶⁶ held that 'the Nation continues to wait, and is losing patience... cleansing the polluted stream of politics is obviously not one of the immediate pressing concerns of the legislative branch of government...political parties have been flouting the directions issued by this court in letter and spirit'.

In *PUCL v. Union of India*,⁶⁷ the Apex Court held:

'The best available people's representatives, as is expected by the democratic system, should not have criminal antecedents.... We are inclined to say so, for in a constitutional democracy, criminalization of politics is an extremely disastrous and lamentable situation...the citizens in a democracy cannot be compelled to stand as silent, deaf and mute spectators to corruption by projecting themselves as helpless.... The voters cannot be allowed to resign to their fate'.

In *Manoj Narula v. Union of India*,⁶⁸ while stating that democracy is the basic and fundamental structure of the Constitution and there is no doubt that Indian democracy is a product of rule of law and aspires to establish an egalitarian social order, held that free and fair elections is the heart and soul of the parliamentary system and recommended to Prime Minister and Chief Ministers not to include in their council of ministers the persons against whom the charges have been framed in serious offences. In *Mohinder Gill* case,⁶⁹ the Court held:

'...a democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places, and repulsive to the idea of criminalization of politics as it corrodes the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law. Democracy, which has been best defined as the Government of the People, by the People and for the People, expects prevalence of genuine orderliness, positive propriety, dedicated discipline and sanguine sanctity by constant affirmance of constitutional morality which is the pillar stone of good governance'... absence of free and fair elections can erode the fundamental values of democracy'.

Not only the apex court, there are a plethora of reports prepared by different institutions that have also created an impact on decriminalization of politics and

⁶⁵ *Brajesh Singh v. Sunil Arora and Others*, Contempt Petition (c) No.656 of 2020.

⁶⁶ *Public Interest Foundation v. Union of India* (2019) 3 S.C.C. 224.

⁶⁷ *PUCL v. Union of India*, (2013) 10 S.C.C. 1.

⁶⁸ *Manoj Narula v. Union of India*, (2014) 9 S.C.C. 1.

⁶⁹ *Supra* note 3.

v. Chief Election Commissioner, New Delhi (1978) 1 S.C.C. 405.

provided for the electoral reforms: 170th and 244th Law Commission Reports, Dinesh Goswami Committee Report on Electoral Reforms (1990), Vohra Committee Report (1993), Indrajit Gupta Committee Report on State Funding of Elections (1998), National Commission to Review of the Working of the Constitution (2002), 18th Report presented to the Rajya Sabha by the Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice on Electoral Reforms (Disqualification of Persons from Contesting Elections on Framing of Charges Against them for Certain Offences), 2007, 4th Report of the Second Administrative Reforms Commission on Ethics in Governance (2008), Tarkunde Committee Report on Election Expenses (2010), and Justice J.S. Verma Committee Report on Amendments to Criminal Law (2013).

In Dinesh Goswami Committee Report on Electoral Reforms (1990),⁷⁰ the Committee stated:

‘...the role of money and muscle powers at elections deflecting seriously the well accepted democratic values and ethos and corrupting the process; rapid criminalization of politics greatly encouraging evils of booth capturing, rigging, violence etc., misuse of official machinery i.e., official media and ministerial; increasing menace of participation of non-serious candidates; form the core of our electoral problems. Urgent corrective measures are the need of the hour lest the system itself should collapse’.

In Vohra Committee Report (1993), it was clearly stated:

‘...the nexus between the criminal gangs, police, bureaucracy and politicians has come out clearly in various parts of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences/crimes, is unable to deal with the activities of the Mafia; the provisions of law in regard economic offences are weak’.

T.S. Krishna Murthy, the former Chief Election Commissioner in his report on electoral reforms,⁷¹ stated:

‘...there have been several instances of persons charged with serious and heinous crimes like murder, rape, dacoity, etc., contesting election, pending their trial, and even getting elected in a large number of cases. This leads to a very undesirable and embarrassing situation of lawbreakers becoming lawmakers and moving around under police protection.... Disqualifying such candidates having criminal background and even when trial is pending, provided charges have been framed

⁷⁰ Legislative Department, Ministry of Law and Justice, *Report of the Committee on Electoral Reforms*, GOVERNMENT OF INDIA (1990), available at: <https://adrindia.org/sites/default/files/Dinesh%20Goswami%20Report%20on%20Electoral%20Reforms.pdf> (last visited 28 Oct. 2022).

⁷¹ T.S. Krishna Murthy, *Proposed Electoral Reforms*, ELECTION COMMISSION OF INDIA (2004), available at: https://prsindia.org/files/bills_acts/bills_parliament/2008/bill200_20081202200_Election_Commission_Proposed_Electoral_Reforms.pdf (last visited 30 Oct. 2022).

against him by the competent court, from contesting elections...such step would go a long way in cleansing the political establishment from the influence of criminal elements and protecting the sanctity of the Legislative Houses’.

In *Dinesh Trivedi, M.P. and Others v. Union of India and Others*,⁷² *Ankul Chandra Pradhan, Advocate Supreme Court v. Union of India and Others*,⁷³ *K. Prabhakaran v. P. Jayaranjan*,⁷⁴ the Court held:

‘Those who break the law should not make the law. Generally speaking the purpose sought to be achieved by enacting disqualification on conviction for certain offences is to prevent persons with criminal background from entering into politics and the house a powerful wing of governance. Persons with criminal background do pollute the process of elections as they do not have many a holds barred and have no reservation from indulging into criminality to win success at an election’.

In 244th Law Commission Report, the Committee, while addressing the question of disqualification of the candidates from being chosen or from being member of the legislative body at the stage of framing of charges, explained the impacts of the criminalization of politics on democracy:

- (a) Enormous amounts of illegal money will be pumped into the electoral process due to extensive links with the criminal under-world, candidates with criminal backgrounds employ illegal tactics such as voter intimidation.
- (b) Entrance of criminals into politics is to avoid or subvert judicial proceedings through political patronage and thus to obstruct the process of justice and causing delays in trials.

VII

Challenges against Free and Fair Elections

Among many types of the electoral manipulations, the most infamous in the era of criminalization of politics is to terrorize the voters either to vote for them or abstain from voting, another one is the attempt to booth-rigging. The employment of intimidation and violence, terror attacks at the polling places are categorized as the political violence, but extreme end of the same can be termed as political terrorism. Voter suppression is a high possibility when political violence is done by the ruling party. Voter suppression can also be carried out by suppressing political opponents, suppressing media freedom, controlling and influencing the NGOs, which are watching and reporting the election process, attacking the integrity of the judicial

⁷² *Dinesh Trivedi, M.P. and Others v. Union of India and Others*, (1997) 4 S.C.C. 306.

⁷³ *Ankul Chandra Pradhan, Advocate Supreme Court v. Union of India and Others*, (1997) 6 S.C.C. 1.

⁷⁴ *K.Prabhakaran v. P.Jayaranjan*, A.I.R. 2005 S.C. 688.

system to disturb the criminal justice system, attacking the election commission, corrupting police, etc., When these activities are carried out by ruling party by using the State actors, it comes under institutional voter-suppression and when opposition party does it through non-State actors, it finds shelter under the category of non-institutional voter suppression.⁷⁵

Any political party, which has acquired the power to form the government by winning election, can control both executive and legislative wings, but not the judiciary. However, as a guardian of the Constitution, when judiciary rules against the criminalization of politics and takes steps to eradicate the menace, the government attacks the independence of judiciary by endorsing corruption charges against judges, maligning their individual and professional reputation by over-exercise of its freedom of speech and expression. The institutions, such as CBI, Enforcement Directorate, Election Commission, and other Constitutional institutions lose their independence and credibility, and thereby become the subordinates to the executive.

Democracy once compromised, is compromised forever, will shrink day by day and it may one fine day vanish totally. The inability of a democratic country to prevent the excessive political violence may result into the death of democracy. The history of world democracies is filled with the stories of the consequences of corrupt political systems. International terrorism, troubled relationship with neighbour countries, economic inflation, Covid-19 virus, and food crisis are the external virus or malware, which are already attacking every democratic country and through tolerance towards the criminalization of politics, a domestic virus is being groomed by the politicians to give a death-blow to the democracy. Corrupt politicians are the reason for today's situation in Afghanistan. Who is the loser in this entire saga is the common man, his individual liberties and his peaceful life.

In Freedom in the World Report 2021, it was stated:

As a lethal pandemic, economic and physical insecurity, and violent conflict ravaged the world, democracy's defenders sustained heavy new losses in their struggle against authoritarian foes, shifting the international balance in favour of tyranny. With reference to India, the report says, large-scale political corruption scandals have repeatedly exposed bribery and other malfeasance, but a great deal of corruption is thought to go unreported and unpunished, and the authorities have been accused of selective, partisan enforcement. The Lokpal and Lokayukas Act of 2014 created independent national and state bodies tasked with receiving complaints of corruption against public servants or politicians, investigating such

⁷⁵ Brad Epperly, *et.al.*, *Rule of Violence, Rule by Law: Lynching, Jim Crow, and the Continuing Evolution of Voter Suppression in the U.S.*, 18 (3) PERSPECTIVES ON POLITICS 756 (2020).

claims, and pursuing convictions through the courts. However, these agencies have been slow to begin operations.⁷⁶

The question needs to be answered is: How to clean the politics in India? Representation of People's Act was amended to introduce conviction in criminal cases as disqualification upon legislators, election commission and political parties are ordered to disclose the criminal antecedents of the legislators to maintain transparency in elections and to provide informed choice to the voters, NOTA was introduced to express way out to show dissatisfaction of the voter, request was made to Prime Ministers and Chief Ministers not to choose legislators having criminal background as ministers, etc., But the data provided by www.myneta.info maintained by the *Association for Democratic Reforms* is showing the figures of central and state legislators as a significant inter-linkage between rich people and criminals, a formula for a clever politician to gain the power through criminals' aid. The 244th Law Commission discussed the solutions to the problem, i.e., disqualifying all those political leaders or legislators from being chosen or from being members of the house, once charge sheet is framed in any criminal case.

VIII

Conclusion

Criminalization of Politics is not a problem specific to India, but it is a global problem. Every democracy in the globe is suffering with the virus of criminalization of politics and is looking for solutions. The success of the political career of one criminal is an ideal example for others to get into the political system. On 23rd November 2021, UN High Commissioner for Human Rights Michelle Bachelet expressed her deep concern about the political violence in Houndras and made appeal to 'ensure people can vote without fear and coercion'.⁷⁷ The UN Human Rights Chief advocated for prompt, thorough, impartial, and effective investigations into all acts of political violence can only make political systems accountable and democracy alive.

Sponsorship of criminals by political system in any democracy undermines the democracy, rule of law, and constitutionalism. A serious situation of massive and disproportionate political violence may be witnessed in a brutal and inhuman way, if criminalization of politics is tolerated and permitted in India.

⁷⁶ *Supra* note 56.

⁷⁷ Michelle Bachelet, UN High Commissioner for Human Rights, *available at*: <https://www.ohchr.org/en/newsevents/pages/displaynews.aspx> (last visited Nov. 19, 2021).

If Parliamentary (Prevention of Disqualification) Amendment Act, 2006 can be passed in a span of two days by the Parliament to create a protection-shield against the disqualification of legislatures on the ground of 'office of profit',⁷⁸ it is possible to pass a law to introduce disqualification on account of criminal antecedent once the charge sheet is filed.

Justice Rakesh Kumar in his order stated that 'a very disturbing trend has developed in our system. If one is influential and powerful, i.e., both in money and muscle, he feels that he is having every privilege to do anything as per his convenience and to the peril of system or poor citizen'. In his order, Justice Rakesh Kumar stated that the protection of individual liberties against arbitrary state-actions is the foremost duty of judiciary and smooth disposition of justice is disrupted due to the attack on judiciary by unruly and corrupt state machinery.

If criminalisation of politics is tolerated, in near days to come, rich, richer and richest criminal will be an essential qualification for becoming a successful politician. The following is the illustration:

<i>Elections</i>	<i>Total candidates analyzed</i>	<i>Crorepati winners</i>	<i>Winners with declared criminal cases including serious criminal cases</i>
Lok Sabha 2014	8206	2218 (27%)	1404 (17%)
Lok sabha 2019	7951	2302 (29%)	1503 (19%)
Puducherry 2021	323	54 (17%)	74 (23%)
West Bengal 2021	2132	528 (25%)	396 (19%)
Tamil Nadu 2021	3867	581 (15%)	732 (19%)
Kerala 2021	928	357 (38%)	249 (27%)
Assam 2021	941	138 (15%)	265 (28%)

Is it that the systematic failures of democracy and electoral system are based upon the criminalization of politics? Whether disqualification should be triggered upon the conviction, as it exists today, upon framing of charges by the court, or upon the presentation of the report by the Investigating Officer under Section 173 of the Code of Criminal Procedure?⁷⁹ If so, what about the false allegations raised against the opponents? What if the political enemies are dealt by the ruling political party by keeping the State police in hand? What about the casual approach of the investigating agencies? These are the questions required to be contemplated in near future.

⁷⁸ *Consumer Education and Research Society v. Union of India* (2009) 9 S.C.C. 648.

⁷⁹ *Supra* note 6.

Looking at the history, the corrupt political leaders are the reason for falling of the empires. Afghanistan is the standing example. Corrupt legislators with criminal antecedents are a death-nail in the chest of democracy, which will eventually kill the democracy. When a corrupt legislator with criminal antecedents sits in the legislative house, it affects the fair law-making. Being a minister in council, he affects the governance process.

Questions and challenges are endless but the solutions are an immediate requirement. Dushyant Dave, Senior Advocate, while quoting Dr. B.R. Ambedkar said, 'Constitutional morality is not a natural sentiment, it has to be cultivated. We must realise that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil which is essentially undemocratic'. Is it that India failed in cultivating the culture of constitutional morality in the hearts of the citizens of India? Why all politicians cannot have constitutional values as the fundamental ideology in their political agendas?

According to Dr. B.R. Ambedkar, 'On the 26th January 1950, we are going to enter into a life of contradictions....How long shall we continue to live this life of contradictions? If we continue to deny it for long, we will do so by putting our democracy in peril'. He further said, 'ours is a battle, not for wealth, nor for power, ours is battle; for freedom; for reclamation of human personality'.

Whether majoritarianism is producing the political violence and political terrorism? The answer can be in affirmative, since the elections in proportional representation system, result is unpredictable. In such political culture, voters can easily be influenced, manipulated, and terrorized. In such system, majority is not conceptualised as gaining more than fifty percent of total votes, even thirty percent of the total votes polled may be useful to win an election. Hence, it is an easy political strategy to divide the voters by increasing number of contestants from each constituency in a country like India. But the issue is; in a large democracy like India, how far any other system is viable?

This, it may be concluded that not only the electoral reforms, structural changes in the election system, criminal justice system, legislative reforms but also the strong adherence to constitutional values by political parties can be instrumental in achieving the decriminalization of politics as well as a healthy and vibrant democracy.